IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3468 of 2007()

LP.55/2007 of JUDL.MAGISTRATE OF FIRST CLASS, PERAMBRA

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PETITIONER: ACCUSED

RAFEEQUE ,S/O.ABDULLA, AGED 29 YEARS
MANGALASSERY MEETHAL HOUSE
PALERI AMSOM, VATAKKUMBAD DESOM, KOYILANDI TALUK
KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3468 of 2007

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Dated this the 16th day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 324 I.P.C. All offences are bailable, it is submitted. Earlier the petitioner was enlarged on bail. But he had to leave for his place of employment abroad and he could not subsequently appear before the learned Magistrate. The learned Magistrate has transferred the case to the list of long pending cases. Coercive processes have been issued against the petitioner. He finds the warrant of arrested issued by the learned Magistrate and steps under S.82/83 chasing him.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence was not wilful, but was due to reasons beyond his control. The petitioner is willing to appear before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned

Magistrate on merits, in accordance with law and expeditiously. He therefore prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in favour of the petitioner.

3. The learned Prosecutor opposes the application. He submits that the petitioner may be directed to appear before the Investigator or the learned Magistrate and then seek regular bail in the normal course.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate.

I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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